IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. CR-16-00906
Indictment No. G10290502

DIRECTOR OF PUBLIC PROSECUTIONS

v

MARK WILLIAM ROWSON

JUDGE:	HIS HONOUR JUDGE TRAPNELL
WHERE HELD:	Melbourne
DATE OF HEARING:	30 April, 3 August, 27 September, 25 October and 30 November 2018
DATE OF SENTENCE:	5 December 2018
CASE MAY BE CITED AS:	DPP v Rowson
MEDIUM NEUTRAL CITATION:	[2018] VCC 2051

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW – SENTENCE
Catchwords:	Obtain financial advantage by deception – Theft – Identity theft of terminally ill friend – Offending committed over 16 months – $290,976 defrauded – No insight into offending behaviour – 51 year old offender – Relevant criminal history – No insight into offending behaviour – Delay – Ongoing atrial fibrillation – Aggregate sentence imposed on all theft charges
Legislation Cited:	*Crimes Act 1958* ss 74, 82(1), *Sentencing Act 1991* ss 5(4), 9, 86
Cases Cited:	*DPP v Frewstal* (2015) 47 VR 660; *DPP v Rivette* [2017] VSCA 150; *Fitzpatrick v The Queen* [2016] VSCA 63; *Hoy v The Queen* [2012] VSCA 49; *Veen v The Queen (No 2)* (1988) 164 CLR 465
Sentence:	Total effective sentence of 63 months and 14 days' imprisonment, non-parole period of 47 months and 14 days' imprisonment

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APPEARANCES:	Counsel	Solicitors
For the DPP	Ms S Thomas	Mr J Cain, Solicitor for Public Prosecutions
For the Accused	Mr P Kilduff	Stary Norton Halphen (30 April 2018)

Mr D Gray	Anthony Isaacs (After 30 April 2018)

HIS HONOUR:

1 Mark William Rowson, you have been found guilty by a jury of three charges of obtaining a financial advantage by deception,[1] and 23 charges of theft.[2] You were acquitted of one charge of theft.

2 The maximum penalty for obtaining a financial advantage by deception and theft is 10 years' imprisonment.

3 The facts

4 The prosecution substantially relied on the evidence of Ms Anna Murchie, the victim's former wife, supported by a large number of bank documents and other business records. Other Crown witnesses gave evidence largely confirmatory of important aspects of her evidence. She gave an account of the circumstances that led to your offending. As you have been convicted by the jury's verdicts, I sentence you on the basis that the jury must have accepted her evidence regarding the salient aspects of your offending conduct.

5 Overview

6 You and the victim, Peter Murchie, had known each other for 40 years since you were 11 years old and he was 14 years old. You gave evidence before the jury that you went to school together and you remained friends throughout adulthood. You both used to work at a tire shop and you were the best man at his wedding. You know Mr Murchie's family well and have known his children since they were born.

7 In December 2013 Peter Murchie was diagnosed with cirrhosis of the liver. You occasionally visited him whilst he was in hospital in 2014. You also had a set of keys to his house where you also attended whilst he was in hospital. During the course of 2014 it became apparent to those who knew him well

[1]Contrary to s 82(1) *Crimes Act 1958* (Vic).
[2]Contrary to s 74 *Crimes Act 1958* (Vic).

that Mr Murchie was terminally ill. His health steadily deteriorated, and he spent lengthy periods of time in hospital throughout 2014. In August 2014 he was admitted to hospital and remained there until he was transferred to a palliative care facility, where he died on 3 December 2014, aged 51 years. Mr Murchie is survived by his former wife, Anna, and their three daughters.

8 From July 2013 until his death and for several weeks thereafter, Mr Murchie was the victim of ongoing identity theft. You were responsible for using Mr Murchie's identify to defraud him and his estate to your financial benefit.

9 *Charge 1 – Obtaining a financial advantage by deception*

10 On about 17 July 2013 you used Mr Murchie's personal details to apply for a fraudulent loan in the sum of $175,000 with Macquarie Bank ('the loan'). You applied for this loan using a mortgage broker, Rhino Money Pty Ltd ('Rhino'). You used Mr Murchie's home in Nunawading as security for the loan. You telephoned the law firm holding the certificate of title to the property and persuaded them to release the document to you by giving them a false email address in Mr Murchie's name, which you had created, to use for verification purposes. It is unclear how you knew the whereabouts of the certificate of title, but you were a close friend of Mr Murchie and had access to his house.

11 A mortgage of land document, purportedly signed by Mr Murchie and witnessed by another person, along with the certificate of title were provided to Rhino acting on behalf of Macquarie Bank. Mr Murchie and the alleged witness were unaware of the existence of the loan or mortgage document.

12 You provided false information in support of the loan application. You represented yourself as Peter Graham Murchie who was employed as a fire safety officer with Global Project Management Pty Ltd. You provided false payslips and certified copies of identity documents in Mr Murchie's name. Those documents were falsely certified by you using a legal practitioner's official stamp, which you obtained from your deceased father's law firm where

you occasionally performed casual work.

13 The loan was approved by Macquarie Bank in August 2013 and the $175,000 was dispersed into two accounts controlled by you. $100,000 was dispersed into the trust account of M.V. Anderson Accountants, the registered accountants of SPMR Holdings Pty Ltd. That company was registered in Victoria in February 2013 with you, Mr Murchie and your former wife listed as directors. Mr Murchie had no knowledge of this company and did not consent to being a director of it.

14 In September 2013 a further $74,529.40 was deposited into a Bank of Queensland ('BOQ') account, which had been set up by you in July 2013 in Mr Murchie's name. Mr Murchie had no knowledge of the existence of this account.

15 In order to distribute the funds deposited into the accounting firm's trust account, a man posing as Mr Murchie provided consent to have the funds distributed as you directed. Consequently, $25,255 was paid into a bank account in your name, $50,000 was paid to Melbourne Grammar School for your daughters' tuition fees, and $17,000 was paid to the fraudulent BOQ account you opened in Mr Murchie's name. The balance was applied by the accounting firm for outstanding fees incurred by you.

16 Thus, the whole $175,000 was distributed to you or at your direction without the knowledge of Mr Murchie.

17 *Charge 5 – Obtaining a financial advantage by deception*

18 Charge 5 relates to a fraudulent extension to the loan in the sum of $75,000 also secured over Mr Murchie's house. You submitted a loan extension application with Rhino and again pretended to be Mr Murchie. You sought and received an additional loan of $75,000, bringing the total amount secured by the fraudulent mortgage to $250,000.

19 You called a representative of Rhino and left a voice message, pretending to be Mr Murchie. You provided false information to Rhino to support this application, including two payslips and a driver licence in Mr Murchie's name.

20 The application was accepted by Rhino on 12 March 2014 and approved by Macquarie Bank on 28 March 2014. The sum of $74,750 was deposited into the fraudulent BOQ account operated by you. Between April and May 2014 you made payments from this fraudulent account into Mr Murchie's legitimate BOQ pension account ('the pension account') totalling $60,670 and comprising amounts of $5,000, $38,670 and $17,000.

21 In April 2014 your wife and two daughters travelled to Coolangatta in Queensland during the school holidays. You flew from Melbourne to join them for a weekend. You pretended to be Mr Murchie and spent thousands of dollars using funds you obtained from the fraudulent BOQ account in his name.

22 Some time before Mr Murchie's final admission to hospital, you found him unconscious at his home and called an ambulance. This led to you and Ms Murchie arranging to meet to discuss Mr Murchie's state of health. During this conversation you told Ms Murchie that Mr Murchie had a personal loan in the sum of $75,000.

23 Ms Murchie disputed the legitimacy of the asserted loan. At one stage she had been appointed executor of Mr Murchie's will and she made enquiries on Mr Murchie's behalf. In the course of these enquiries, she discovered that the loan of $175,000 had been taken out with the certificate of title for Mr Murchie's home being used as security for the loan.

24 Ms Murchie discussed the loan with Mr Murchie who said that he did not have any loans and that the certificate of title to his home was held by his solicitors. Further enquires with his solicitors revealed that the certificate of title had been released to be used as security for the fraudulent loan as a result of your

conduct in falsely representing yourself to be Mr Murchie. Mr Murchie asked Ms Murchie to arrange to have all his mail redirected to her. An overdraft letter was sent to her in respect of the fraudulent BOQ account that you had control of and Mr Murchie was told of this.

25 It was as a consequence of Ms Murchie's thorough and persistent investigations that the extent of your fraudulent conduct was discovered.

26 Following some litigation, the loss occasioned by the offending conduct comprising charges 1 and 5 ultimately fell on Macquarie Bank. On 30 April 2018 I made a compensation order[3] in favour of Macquarie Group Ltd in the sum of $250,000. The fact this loss has fallen on a large corporation, rather than Mr Murchie's deceased estate, is not a mitigating circumstance.[4]

27 *Charges 2-3 and 6-23 – Theft*

28 On 2 February 2014, you transferred $400 from the pension account, which you apparently had access to, to the fraudulent BOQ account using internet banking. You made another internet banking transaction on 4 February 2014, transferring $200 from the pension account to the fraudulent account. These transactions constitute charges 2 and 3.

29 In addition to these transfers you conducted a further 13 internet banking transactions, transferring various amounts between 25 April 2014 and 25 May 2014, for a total amount of $5,850. These fraudulent transactions constitute charges 6 to 23.

30 The total amount stolen by this means (charges 2 to 3 and 6 to 23) was $6450.

[3]Pursuant to s 86 of the *Sentencing Act* 1991.

[4]See eg *R v Machtas* (1992) 62 A Crim R 179, 182 (Gleeson CJ, Handley JA and Badgery-Parker J agreeing); *Hoy v The Queen* [2012] VSCA 49 [20] (Redlich JA, Nettle JA agreeing).

31 *Charge 24 – Obtaining a financial advantage by deception*

32 This charge relates to you fraudulently opening of a Macquarie Bank Visa credit card account in the name of Peter Murchie, with a credit limit of $23,600. On 12 August 2014 you applied online for the credit card. Macquarie Bank required an applicant's identify to be verified in person. Accordingly, purporting to be Mr Murchie you attended the Nunawading post office on 12 August. You falsely represented you were a fire safety officer employed by Global Project Management earning an annual net salary of $105,000. You provided false documents to this effect.

33 On the previous day the real Peter Murchie was admitted to Box Hill Hospital for treatment of his liver disease and he was there at the time you presented yourself at the post office.

34 Macquarie Bank approved the credit card application with a limit of $23,600. You then commenced using the credit card to make various payments, including a payment of $5,000 to Melbourne Grammar School. You arranged to have the credit card statements sent to a post office box, which was registered in a false name using your mother's residential address. You continued using the credit card until 28 January 2015, 56 days after Mr Murchie's death.

35 *Charges 25 and 26 - Theft*

36 These charges relate to the payment of rent for a property occupied by your wife and daughters via a direct debit from the pension account. On 3 November 2014 you pretended to be Mr Murchie and you completed a direct debit authority to pay the rent. At this time only ten cents remained in the fraudulent BOQ account, which explains why you used Mr Murchie's pension account on this ocassion.

37 As a result the amounts of $6,038 and $4,019 were debited from the pension

account to the real estate agents acting in relation to for your wife's rental home. The total amount obtained was $10,057. At the time Mr Murchie was a terminally ill inpatient at Box Hill Hospital.

38 *Charge 27 - Theft*

39 On 25 November 2014 you completed a further direct debit authority changing the account from the fraudulent BOQ account to Mr Murchie's pension account. At this point in time Mr Murchie had been in a hospice for six days and he would only live for a further eight days.

40 On 12 January 2015, 40 days after Mr Murchie died, you made a payment in the sum of $869 from the pension account into the fraudulent Macquarie Bank Visa card account, by the fraudulent use of this direct debit authority.

41 At some stage Ms Murchie was notified that the fraudulent BOQ account was overdrawn. She visited Mr Murchie in hospital, with their three daughters and family friends. They discussed the loan taken out in Mr Murchie's name. He was shown a BOQ letter advising of the overdrawn status of the fraudulent account, and a mortgage of land document for his home. Before those present Mr Murchie asked a family friend to note his statement to the effect that he had not applied for any loan or received funds from any such loan and that the signature on the mortgage document was not his.

42 *Record of interview*

43 On 25 January 2016 you were interviewed by police and you essentially denied any wrongdoing.

44 ***Victim impact***

45 Ms Murchie prepared a victim impact statement dated 20 April 2018 which was tendered over your counsel's objection at the plea hearing.[5] I ruled it was

[5]Exhibit P2.

admissible subject to a number of deletions. I have only had regard to the direct consequences of your offences on Ms Murchie referred to in paragraphs 1, 2, 3 and 5 of the victim impact statement.[6]

46 It is evident that your offending has caused her distress, particularly as it has affected her ability to grieve for Mr Murchie and to provide support for their three daughters. She has a fear of not being able to trust people and she has suffered anxiety and panic attacks. The distress she has suffered has exacerbated a pre-existing medical condition. I take the impact of your crimes on Ms Murchie into account in sentencing you.

47 Offence seriousness

48 Taken overall your offending conduct is grave. Mr Kilduff of counsel, who appeared on your behalf, accepted the offending was 'serious'.[7] Over a period of some 16 months you sought to defraud your seriously ill friend and his deceased estate of a total of $290,976. He was a vulnerable victim who trusted you. Your deprivations continued past a point in time when you must have known he was terminally ill.

49 Whilst most of this loss ultimately fell on Macquarie Bank, this is only because your frauds were discovered through the sustained and persistent investigation conducted by Ms Murchie. Had your crimes remained undiscovered, in all probability Mr Murchie's three daughters,[8] who knew and trusted you, would have been seriously financially disadvantaged. The serious breach of trust you owed to your friend and his children is a significant aggravating feature of these crimes.

50 Your crimes were sophisticated, well planned and executed and involved sustained fraudulent conduct on your part. Your motive for committing these crimes was to support yours and your family's lifestyle, including paying

[6]See discussion in plea transcript pp 2.25–8.15 ('T').

[7]See 'Plea Submissions on Behalf of Accused' dated 28 April 2018 [2] (Exhibit D1).

[8]Aged 21, 18 and 16 respectively.

private school fees and an extravagant Queensland holiday.

51 Your counsel accepted that you demonstrate no remorse for your actions.[9] Having observed you giving evidence in the trial and in light of Dr Cunningham's psychometric assessment of you,[10] I find you have no insight into your offending behaviour or its gravity or its effect on your victims.

52 Clearly, denunciation, general deterrence and just punishment must loom large in sentencing you. In light of your serious and relevant prior convictions, detailed later, specific deterrence and protection of the community must be given significant weight. Moreover, I can only adopt a very cautious approach to your prospects of rehabilitation.

53 Personal circumstances

54 You were born on 29 June 1967 and at the time of the offending you were aged between 46 and 47 years. You are now 51 years old.

55 You grew up in Croydon and Donvale and you are the eldest of four boys. Your father was a solicitor and your mother was a teacher. You indicated to Dr Cunningham, a forensic psychologist who prepared a report at your legal representative's request, that there were no problems in the family home, although your parents fought frequently and separated when you were in your teenage years.[11]

56 You left home when you were 19 years old. Your father passed away in October 2015. Your mother remains supportive of you and visits you in prison. She was in court supporting you during the plea hearing.

57 You attended St Peter Julian Eymard Primary School and completed your secondary schooling at Whitefriars College. You began studying for a science degree at Monash University but failed to complete this. You reported to Dr

[9] T 37.24–5; 55.28–56.6.
[10] Dr Aaron Cunningham, 'Confidential Psychological Assessment' dated 27 April 2018 pp 2–3 [3.0] (Exhibit D1).
[11] Ibid pp 1–2 [2.0].

Cunningham that whilst in custody[12] you completed a Masters of Business Administration and studied medicine and genetics through online courses.

58 You have engaged in a number of entrepreneurial ventures where you have primarily worked for yourself with varying degrees of success. During your science degree you conducted a window cleaning business. Later you operated a live seafood business. You reported that you were 'ripped off' by a business partner in 1980. Since then, you have worked in IT consulting, providing services to various financial and legal institutions. In the past you have owned bars and Asian restaurants.

59 Between 2001 and 2005 you operated a chemical import/export business and you have been trying to develop a road safety software application. You have been developing a search engine for genetics research and have been trying to manufacture synthetic versions of drugs. Despite your multifarious attempts at establishing businesses you have had difficulty maintaining a stable and consistent income, as many of your businesses have struggled financially.

60 You have married twice. Your first marriage lasted for five to six years and ended because your wife did not want children. Your second intimate relationship ended because your partner could not have children. You remarried in 2002 and remained together for 13 years. You separated in January 2015, about the time of your last offence, but remain married. You have two daughters who live with their mother. You remain on good terms with your estranged wife and children.

61 ***Substance abuse***

62 You have been an alcoholic through different periods of your life; using alcohol as a coping mechanism to relieve symptoms of stress and anxiety. In the past you have consumed one bottle of Scotch regularly on a daily basis. Your counsel conceded that you were 'clearly an alcoholic'. In his report tendered

[12] I presume this was in respect of Mr Rowson's previous offending.

on the plea,[13] Dr Cunningham opines that you exhibit 'clinical elevations for alcohol abuse'. However, you have not had any issues with other illicit substances.

63 ***Mental health***

64 A psychological assessment was conducted by Dr Cunningham who administered the Millon Clinical Multiaxial Inventory 4th Edition assessment tool to gather information on any personality traits and specific psychiatric disorders that you may have. Dr Cunningham considers that your profile 'indicated traits of narcissism … expressed in a preoccupation with immature and self-glorifying fantasies of success that are minimally constrained by objective reality'. He further opined that these traits have led to 'difficulty empathising and connecting to others in relationships'.

65 Ultimately, Mr Kilduff accepted that there was insufficient evidence for me to find that this character trait was sufficiently causally connected with your offending conduct so as constitute a mitigating circumstance.[14] However, I accept it provides some explanation as to why you offended in the way you have.

66 You reported to Dr Cunningham that you were treated for depression when you separated from your first wife, but you did not present with symptoms of depression or anxiety when he assessed you. Although you have experienced some loss recently, with the deaths of your best friend and your father, Dr Cunningham concluded that you do not currently present with any mental illness.

67 Unsurprisingly, Mr Kilduff accepted that no *Verdins* principles were engaged in your case.

68 ***Medical issues***

[13]Exhibit D2 – Psychological report of Dr Aaron Cunningham dated 27 April 2018.
[14]T 47.27–49.31.

69 You suffer from chronic atrial fibrillation,[15] a persistent degenerative heart condition which recently required surgical intervention by way of an ablation in an attempt to restore sinus rhythm. It was because of the need to treat this condition that there has been such a long delay in sentencing you for these offences.

70 Concerns were expressed regarding whether you would undergo that procedure in a timely manner whilst in custody, as opposed to being treated as a private patient in the community. There was conflicting medical opinion regarding to what extent any delay in the procedure would adversely affect a successful outcome.[16] Consequently, your legal representatives requested that I postpone sentencing you so that you could be granted bail to attend a private hospital to undergo the procedure, rather than waiting for Justice Health to deal with your condition within the prison system. Accordingly, you were bailed under very strict conditions on 27 September 2018. The procedure was ultimately performed on 8 October 2018 in a private hospital.

71 Following the ablation procedure you were to be remanded in custody for sentence, however, there was a deterioration in your medical condition which necessitated a further delay in me revoking your bail. Whilst remaining on bail you were admitted to Box Hill Hospital on two occasions. On the first occasion you were treated for pneumonia and discharged shortly thereafter.[17] On the second occasion you were transported by ambulance to hospital after suffering chest pain. You were found to have relapsed into atrial fibrillation.[18]

72 A number of mention hearings were then held before me in an attempt to facilitate your further treatment in the community as a private patient. You underwent a direct current cardioversion procedure which restored sinus rhythm, however you later relapsed into atrial fibrillation, from which you

[15] Exhibit D4 – Letter of Dr David O'Donnell dated 5 April 2018.
[16] Exhibit D3 – Correspondence from Professor David Hare dated 30 April and 26 September 2018.
[17] Discharge summary report from Box Hill Hospital shows discharge on 12 October 2018.
[18] Per letter from Professor Hare dated 16 October 2018.

continue to suffer. A further direct current cardioversion procedure could not be arranged in a timely fashion and you were subsequently remanded in custody for sentence on 25 October 2018.

73 The period from 27 September 2018 until 25 October 2018 (28 days) will not be declared as pre-sentence detention. However, on account of the very strict conditions attaching to your bail, I will factor some of this period in as part of the sentences I impose.

74 I am satisfied that it is likely your medical condition can be adequately monitored and threated whilst you are in custody, nonetheless I take into account in your favour that you are not a well man and you will suffer a degree of custodial hardship by reason of this condition.

75 ***Prior criminal history***

76 You have a brief, but relevant, prior criminal history from when you appeared at this Court in 2006. You pleaded guilty to one count of obtaining a financial advantage by deception and one count of attempting to obtain a financial advantage by deception. You lodged false business activity statements with the Australian Taxation Office in relation to shelf companies that you purchased in order to claim substantial tax refunds totalling $2,453,102. You also attempted to obtain additional refunds totalling $1,333,173.

77 Your fraudulent scheme involved a substantial degree of careful planning. You created two false identities for the two shelf companies, along with accompanying identification documents. You used those documents to open bank accounts and you engaged the services of the ‘big four’ accounting firm Deloitte Touche Tohmatsu Limited for financial advice and to lodge the business activity statements over a two year period. You used multiple bank accounts to withdraw the money received from the refunds in order to avoid the daily limits placed on ATM withdrawals. The Australian Taxation Office eventually became suspicious and a police operation was launched by

forwarding a large tax refund cheque to you.

78 Following your being sentenced by this Court, the Commonwealth Director of Public Prosecutions appealed to the Court of Appeal against the inadequacy of the sentences imposed. That Court described your offending as 'sophisticated' and said that you exploited the scheme 'for [your] own financial benefit'.[19] Moreover, the Court said your offending 'involved other innocent parties in [your] wrongdoing, and sought to exploit the reputation of prominent accounting firms and financial institutions, in order to lend some credibility to your scheme'.[20] The Commonwealth Director's appeal was upheld and you were resentenced to a total effective sentence of five years' imprisonment, with a non-parole period of three years.[21]

79 Your prior criminal history demonstrates that you have 'manifested in [your] commission of the instant offence[s] a continuing attitude of disobedience of the law'. Accordingly, it is necessary in your case to give significant weight to specific deterrence and protection of the community.[22]

80 Mitigating circumstances

81 There are few mitigating circumstances present in your case. You stood your trial, which was your right, but it means you can receive no discount for pleading guilty. You lack insight into the reasons for your offending conduct. At the plea hearing your counsel conceded that you have demonstrated no remorse.

82 There has been some delay in this case through no fault of yours, and I take into account that you have had this matter hanging over your head for some four years. At 51 years of age you are neither a youthful offender nor elderly. *Verdins* principles are not engaged in your case. I do take into account the

[19] *DPP (Cth) v Rowson* [2007] VSCA 176 at [23] per Kaye AJA.
[20] Ibid.
[21] Ibid at [34].
[22] *Veen v The Queen (No 2)* (1988) 164 CLR 465, 477 (Mason CJ, Brennan, Dawson and Toohey JJ).

state of your health and a degree of custodial hardship. I will carefully apply the totality principle and seek to avoid imposing a crushing sentence on you.

83 ***Application of sentencing principles***

84 I have had regard to current sentencing practices in relation to the charges before me in light of the decision of the High Court of Australia in *DPP v Dalgliesh (a Pseudonym)*.[23] It is difficult to gauge more than a very general yardstick from so called 'comparable cases', given the wide range of offending conduct which can constitute these offences and the myriad of personal circumstances pertaining to individual offenders. To the extent that I have been able to gain any assistance from comparable cases I have sought to do so in your case.

85 The basic purposes for which a court may impose a sentence are just punishment, deterrence both specific and general, rehabilitation, denunciation and protection of the community. In sentencing you I must have regard to a range of factors such as the seriousness of the offences, your culpability for them, the effect on any victim and your personal circumstances.

86 I am required to balance the interests of the community in denouncing criminal conduct with the interests of the community in seeking to ensure that, as far as possible, you are rehabilitated.

87 Given the serious nature of these offences, general deterrence, denunciation and just punishment must be accorded significant weight in sentencing you. In your case I consider that in light of your antecedents and your lack of insight specific deterrence and protection of the community also need to be given significant weight. I can only adopt a very cautious approach to your prospects of rehabilitation.

88 I consider that sentences of immediate imprisonment are the only appropriate

[23](2017) 91 ALJR 1063.

sentences which will achieve the purposes for which these sentences are imposed.[24]

89 In this case I consider it is appropriate to impose an aggregate sentence of imprisonment on the theft charges — being charges 2, 3, 6 to 23 (inclusive) and charges 25 to 27 (inclusive). These offences form part of a series of offences of the same or a similar character. Moreover, they are factually related to the extent that they all involve unauthorised transactions conducted by you, involving either the fraudulent BOQ account you set up in Mr Murchie's name or his actual BOQ pension account.[25]

90 Stand up Mr Rowson

91 On charge 1, obtain financial advantage by deception, you are convicted and sentenced to 35 months and 14 days' imprisonment.

92 On charges 2, 3, 6 to 23 (inclusive) and charges 25 to 27 (inclusive), theft, you are convicted and sentenced to 15 months' imprisonment.

93 On charge 5, obtain financial advantage by deception, you are convicted and sentenced to 20 months' imprisonment.

94 On charge 24, obtain financial advantage by deception, you are convicted and sentenced to 15 months' imprisonment.

95 I order that 9 months of the aggregate sentence imposed on charges 2, 3, 6 to 23 (inclusive) and charges 25 to 27 (inclusive), 10 months of the sentence imposed on charge 5 and 9 months of the sentence imposed on charge 24 be served cumulatively on the sentence imposed on charge 1 and on each other.

96 This makes a total effective sentence of 63 months and 14 days' imprisonment. I order that you serve a minimum of 47 months and 14 days'

[24] See *Sentencing Act 1991* s 5(4).

[25] *Sentencing Act 1991* s 9. See *Fitzpatrick v The Queen* [2016] VSCA 63 [42]–[48] (Weinberg AP, Priest and Beach JJ); *DPP v Frewstal* (2015) 47 VR 660, 669–71 [42]–[45] (Maxwell P), 682–3 [113]–[116], 685 [124] (Priest and Kaye JJA); *DPP v Rivette* [2017] VSCA 150 [80]–[89] (Ashley and Priest JJA).

imprisonment before becoming eligible for parole.

97 I declare the period of 238 days (not including this day) as the period of pre-sentence detention to be reckoned as already served under this sentence and I direct that the fact that declaration was made and its details be noted in the records of the court.

98 Remove the prisoner.

99